Headquarters, U.S. Army Materiel Command

CURRENT LEGAL ISSUES
AMC PARC Conference
Fall 2005

Presented by:

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PROTEST STATISTICS

- **FY 2005**
  - ✓ **GAO 75**
  - ✓ **HQ, AMC 27**
  - ✓ **Total 102**
- **Increase of 15 % from FY 2004**
- **Sustain rate of GAO protests: 2%**
  - ✓ **FSS**
  - ✓ **Bundling**

TRENDS & ISSUES

- **Disconnect between the source selection plan and the manner in which the evaluation takes place**
- **Disconnect between the source selection plan and sections L and M of the solicitation**
- **Overly complex evaluation plans**

BUNDLING / CONSOLIDATIONS

- **Small Business Act**
  - ✓ **Requirement combines contracts previously performed by small businesses**
  - ✓ **Resulting single contract likely to be unsuitable for award to a small business Concern**
- **CICA**
  - ✓ **Allows restrictive provisions / conditions only to extent necessary to satisfy agency needs**
  - ✓ **Combining separate, multiple requirements into one contract has potential for restricting competition**
- **DOD Consolidation Rules (DFARS 207.170)**
  - ✓ **Consolidation of requirements must be made with view toward providing SB's with appropriate opportunities to participate as prime and subcontractors**
  - ✓ **Consolidations with total value exceeding $5M require specified analysis in acquisition strategy**

SOURCE SELECTION AUTHORITY

- **Should a PEO or PM be the SSA on an acquisition involving his or her program?**
  - ✓ **Balancing two competing interests**
    - **The need for someone knowledgeable about the items or services being acquired**
    - **The need for an impartial decision maker**
  - ✓ **Is the PEO/PM too close to those in the industry to be unbiased?**
- **The law assumes that Government employees operate in good faith, so there is no automatic need to prohibit a PEO or PM as SSA.**
  - ✓ **Allegations of bad faith must rest on a "strong evidentiary footing" to overcome the normal presumption of regularity and good-faith conduct by agency officials. Beta Analytics International Inc. v. U.S. , Fed. Cl., No. 04-556C, filed under seal 6/30/04, reissued 7/9/04).**

ADMINISTRATIVE REPORTS

- **Administrative reports filed at the GAO need to contain accurate documents, such as**
  - ✓ **Signed copies of the Source Selection Decision documents**
  - ✓ **Complete pages of each document**
- **The receipt of reports with documents missing pages or missing signatures does not help our case.**

CONTINGENCY CONTRACTING GUIDANCE

- **New DoD Instruction 3020.41, Contractor Personnel Authorized to Accompany U.S. Armed Forces (3 Oct 05)**
  - ✓ **Comprehensive source of DoD policy and procedures concerning DoD contractor personnel authorized to accompany the U.S. Armed Forces**

CONTINGENCY CONTRACTING GUIDANCE (Cont'd)

- **DoDI 3020.41 coverage:**
  - **Contractor planning**
  - **Visibility/Accountability**
  - **Deployment/Redeployment**
  - **Security vetting and sustaining contractor personnel**
  - **In-theater procedures/Letters of Authorization**
  - **Force protection and weapons issuance**
  - **Contractor legal status and discipline**